

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT KENNY,

Plaintiff,

v.

PACIFIC INVESTMENT
MANAGEMENT COMPANY LLC, a
Delaware limited liability company;
PIMCO INVESTMENTS LLC,

Defendants.

Case No. 2:14-cv-01987-RSM

JOINT STATUS REPORT AND
DISCOVERY PLAN

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DISCOVERY PLAN

(Case No. 2:14-cv-01987-RSM) – 1
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JOINT STATUS REPORT AND DISCOVERY PLAN

Pursuant to the Court's September 24, 2015 Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (the "September 24th Order"), Counsel representing Plaintiff Robert Kenny and Defendants Pacific Investment Management Company LLC ("PIMCO") and PIMCO Investments LLC ("PIMCO Investments") (together, the "Parties") participated in a telephonic conference pursuant to Fed. R. Civ. P. 26(f) on October 16, 2015. The Parties hereby provide the Court with a combined Joint Status Report and Discovery Plan (the "Report"), which contains the categories of information set forth in the September 24th Order.

1. A statement of the nature and complexity of the case.

Plaintiff Robert Kenny brought the above-captioned derivative action on behalf of the PIMCO Total Return mutual fund (the "Fund") alleging that Defendants violated their "fiduciary duty with respect to the receipt of compensation" under Section 36(b) of the Investment Company Act of 1940 by receiving excessive advisory, supervisory and administration, and distribution fees from the Fund. Plaintiff seeks to rescind the investment advisory agreements, the supervisory and administration agreements, and the distribution and servicing agreements between Defendants and the Fund, and to recover the amounts charged by Defendants or, in the alternative, to recover any portion of the compensation Defendants received that is determined to be excessive.

2. A proposed deadline for the joining of additional parties.

The Parties do not anticipate the joinder of any additional parties.

3. The parties have the right to consent to assignment of this case to a full time United States Magistrate Judge, pursuant to 28 U.S.C. §636(c) and Local Rule MJR 13, to conduct all proceedings. The Western District of Washington assigns a wide range of cases to Magistrate Judges. The Magistrate Judges of this district thus have significant experience in all types of civil matters filed in our court. Additional information about our district's Magistrate Judges can be found at www.wawd.uscourts.gov. The parties should indicate

whether they agree that the Honorable Brian A. Tsuchida may conduct all proceedings, including trial and the entry of judgment. When responding to this question, the parties should only respond “yes” or “no.” Individual party responses should not be provided. A “yes” response should be indicated only if all parties consent. Otherwise, a “no” response should be provided.

No.

4. A discovery plan that states, by corresponding paragraph letters (A, B, etc.), the parties’ views and proposals on all items in Fed. R. Civ. P. 26(f)(3), which includes the following topics:

(A) initial disclosures;

Pursuant to the September 24th Order, the Parties’ Initial Disclosures were exchanged on October 29, 2015.

(B) subjects, timing, and potential phasing of discovery;

- Document discovery shall be substantially completed on or before **March 31, 2016**.
- Fact discovery shall be completed on or before **July 15, 2016**.
- Expert discovery shall commence promptly upon the closure of fact discovery and shall be completed on or before **January 13, 2017**, in accordance with the following sequence:
 - Plaintiff shall designate any expert witnesses and serve each expert’s written report pursuant to Fed. R. Civ. P. 26(a)(2)(B) on or before **September 9, 2016**.
 - Defendants shall designate any expert witnesses and serve each expert’s report pursuant to Fed. R. Civ. P. 26(a)(2)(B) on or before **October 28, 2016**.
 - Plaintiffs shall serve any rebuttal expert reports from previously-designated experts on or before **November 30, 2016**.
 - Expert depositions shall be completed by **January 13, 2017**.

(C) electronically stored information;

The Parties intend to submit a stipulated Agreement Regarding Discovery of Electronically Stored Information (the “ESI Agreement”) for the Court’s approval, based upon the Court’s

1 Model Agreement Regarding Discovery of Electronically Stored Information (the “Model ESI
2 Agreement”), with minor stipulated modifications.

3 **(D) privilege issues;**

4 The Parties anticipate reaching agreement on privilege issues consistent with the
5 provisions related to privilege in the Model ESI Agreement, to be reflected in the agreement to be
6 submitted for the Court’s approval.
7

8 **(E) proposed limitations on discovery; and**

9 The Defendants’ position is that the default limitations of ten fact depositions pursuant to
10 Fed. R. Civ. P. 30(a)(2)(A) and 25 interrogatories, including all discrete subparts, pursuant to Fed.
11 R. Civ. P. 33(a)(1) should apply to this action. Plaintiff believes that a larger number of
12 depositions and interrogatories may be warranted and reserves his right to seek additional
13 discovery in the future. The Parties will proceed with discovery according to the default
14 limitations and will meet and confer regarding whether additional depositions and interrogatories
15 are warranted at an appropriate time during the discovery process.
16

17 **(F) the need for any discovery related orders.**

18 The Parties intend to submit for the Court’s approval a stipulated ESI Agreement based on
19 the Model ESI Agreement. The Parties also intend to submit a proposed protective order for the
20 Court’s approval pursuant to Fed. R. Civ. P. 26(c)(1) and LCR 26(c)(2).
21

22 **5. The parties’ views, proposals, and agreements, by corresponding paragraph**
23 **letters (A, B, etc.), on all items set forth in Local Civil Rule 26(c)(1), which includes the**
24 **following topics:**
25
26

(A) prompt case resolution;

The Parties do not believe that the case is susceptible of prompt resolution at this stage.

(B) alternative dispute resolution;

The Parties do not believe that alternative dispute resolution will be productive at this stage.

(C) related cases;

There are no related cases.

(D) discovery management;

Not necessary at this time. In order to promote the expeditious and efficient resolution of the action, the Parties have agreed to deadlines for substantial completion of document discovery, fact discovery and expert discovery. The Parties will work together in good faith to manage and limit all discovery burdens and costs to the extent possible. Furthermore, the Parties intend to submit a stipulated ESI Agreement for the Court's approval, based on the Model ESI Agreement, addressing the Parties' obligations with regard to electronically stored information. Finally, the Parties have agreed to meet and confer in good faith regarding the need, if any, to deviate from the default limitations on discovery set forth in Fed. R. Civ. P. 30(a)(2)(A) and Fed. R. Civ. P. 33(a)(1).

(E) anticipated discovery sought;

Plaintiff intends to seek and obtain discovery on the following issues: (1) the oversight of the PIMCO Total Return Fund and PIMCO Funds by the PIMCO Funds' Board of Trustees; (2) the independence of the Board of Trustees; (3) the review and approval of the investment advisory fees, supervisory and administration fees, servicing fees, and distribution fees at issue; (4) the nature and quality of the service Defendants provided to Plaintiff and other PIMCO Total Return Fund

1 shareholders; (5) Defendants' profitability related to the PIMCO Total Return Fund; (6) the fees
2 charged and services provided by Defendants to other PIMCO clients or mutual funds to which
3 Defendants provide investment advisory or sub-advisory services; (7) the performance of the Total
4 Return Fund; (8) PIMCO's management.

5 Defendants intend to take targeted discovery of Plaintiff relating to his investments in PIMCO
6 managed products including the Fund, any inquiries/complaints he registered with PIMCO or others
7 related to his investments in such PIMCO-managed products, other investments he might have in
8 products managed by other advisers and any inquiries/complaints registered with those advisers or
9 others, the performance of his investments, and his knowledge of and concerns regarding the fees
10 being charged.

11
12 **(F) phasing motions;**

13 Any motions to compel or other discovery-related motions relating to fact discovery will
14 be filed no later than 30 days before the fact discovery deadline.

15 Any summary judgment or other dispositive motions will be filed no later than 30 days
16 after the close of expert discovery.

17
18 **(G) preservation of discoverable information;**

19 Plaintiff has preserved all of the documents in his possession related to his investment in the
20 PIMCO Total Return Fund since investigating his claims that are the subject of this lawsuit and
21 anticipates no issues in connection with his preservation of discoverable information.

22 Defendants have had a litigation hold in place since the litigation commenced and
23 anticipate no issues in connection with their preservation of discoverable information.

(H) privilege issues;

The Parties anticipate reaching an agreement on privilege issues consistent with the provisions related to privilege in the Model ESI Agreement, which will be set forth in the stipulated ESI Agreement to be submitted for Court approval.

(I) Model Protocol for Discovery of ESI; and

The Parties intend to submit a stipulated ESI Agreement for the Court's approval, based upon the Model ESI Agreement, with minor stipulated modifications.

(J) alternatives to Model Protocol.

Not applicable.

6. The date by which discovery can be completed.

Discovery, including expert discovery, shall be completed by or on **January 13, 2017**.

7. Whether the case should be bifurcated by trying the liability issues before the damages issues, or bifurcated in any other way.

The Parties do not believe there would be any advantage to bifurcating the case.

8. Whether the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the sake of economy.

At this time, the Parties do not believe that the pretrial statements and pretrial order should be dispensed with in whole or in part.

9. Whether the parties intend to utilize the Individualized Trial Program set forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil Rule 39.1.

The Parties do not intend to utilize the Individualized Trial Program or any ADR options set forth in LCR 39.1.

10. Any other suggestions for shortening or simplifying the case.

None at this time.

11. The date the case will be ready for trial. The Court expects that most civil cases will be ready for trial within a year after filing the Joint Status Report and Discovery Plan.

The Parties anticipate that the case will be ready for trial in **June 2017**, approximately five months after the close of expert discovery.

12. Whether the trial will be jury or non-jury.

Plaintiff seeks a jury trial. Defendants contend that Plaintiff is not entitled to a jury trial in this action and anticipate moving to strike Plaintiff's jury demand.

13. The number of trial days required.

Plaintiff anticipates that approximately 15 trial days will be required.

Defendants anticipate that approximately 10 trial days will be required.

14. The names, addresses, and telephone numbers of all trial counsel.

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27 **15. The dates on which the trial counsel may have complications to be considered**
28 **in setting a trial date.**

29 The Parties are not aware of any dates on which their trial counsel may have complications
30 to be considered in setting a trial date.

1 **16. If, on the due date of the Report, all defendant(s) or respondents(s) have not**
2 **been served, counsel for the plaintiff shall advise the Court when service will be effected,**
3 **why it was not made earlier, and shall provide a proposed schedule for the required FRCP**
4 **26(f) conference and FRCP 26(a) initial disclosures.**

5 Not applicable.

6 **17. Whether any party wishes a scheduling conference before the Court enters a**
7 **scheduling order in the case.**

8 The Parties respectfully request a scheduling conference at the Court's convenience.

9 **18. List the date(s) that each and every non-governmental corporate party filed its**
10 **disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1.**

11 The Defendants filed their corporate disclosure statement on March 6, 2015 (Dkt. No. 27).

12 **19. Whether the parties consent to having hearings in this matter video recorded**
13 **as part of the Judiciary's Pilot Project on Cameras in the Courtroom, as set forth in Section**
14 **V below.**

15 Plaintiff consents to having hearings in this matter video recorded. The Defendants do not
16 consent to having hearings in this matter video recorded.

17 Dated: this 5th day of November, 2015.

18 By: KELLER ROHRBACK L.L.P.

19 _____
20 /s/ Michael D. Woerner

21 _____
22 /s/ Tana Lin

23 _____
24 /s/ Laura R. Gerber

25 _____
26 /s/ Ian Mensher

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20 Attorneys for Defendants Pacific Investment
21 Management Company LLC and PIMCO
22 Investments LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

DATED: November 5, 2015.

By: s/ Ronald L. Berenstein

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